

## Message Text

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ACTION EB-08

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SUBJ: INTERAGENCY TASK FORCE TO DEVELOP A NATIONAL EXPORT POLICY

REF: STATE 095673 CARACAS A-31

1. IN THE COURSE OF ANALYZING THE ACTIVITIES OF THE COMMERCIAL TASK FORCE IN CARACAS (CARACAS A-31), THE EMBASSY RECORDED A NUMBER OF FACTORS BEYOND THE CONTROL OF THE TASK FORCE WHICH TENDED TO INHIBIT THE SUCCESS OF AMERICAN FIRMS IN BIDDING ON THE VERY LARGEST MAJOR PROJECTS IN VENEZUELA. THESE FACTORS INCLUDED THE REQUIREMENTS FOR CONSORTIUM BIDDING VS. THE STRICTURES OF US ANTITRUST; THE HIGH RISK OF FIXED COST BIDDING ON LARGE, OFTEN ILL-DEFINED PROJECTS VS. THE LACK OF INSURANCE AND GUARANTEES FROM THE USG; POLITICAL AFFINITIES AND THE WILLINGNESS OF COMPETING COUNTRIES TO OFFER QUID PRO QUO DEAL AND OTHER CONCESSIONS TO INFLUENCE MAJOR PROJECT AWARDS VS. THE SEPARATION OF BUSINESS AND GOVERNMENT IN THE U S, THE USG'S INABILITY TO DESIGNATE A "CHOSEN INSTRUMENT", LIMITS ON REPRESENTATION FUNDS, AND SO ON. THIS MESSAGE FOCUSES ON ONE ASPECT: US ANTITRUST.

2. ANTITRUST. DO THESE LAWS AS THEY ARE PRESENTLY INTERPRETED  
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INHIBIT MAJOR PROJECT BIDDING BY US CONSORTIA? THERE IS ABUNDANT EVIDENCE THAT THEY DO. IN ONE OF THE WORKSHOPS HELD DURING THE LATIN AMERICAN COMMERCIAL ATTACHES CONFERENCE IN SAO PAULO LAST YEAR (A-1270), A NUMBER OF COMMERCIAL ATTACHES WERE OF THIS OPINION. DURING THE COURSE OF THE BIDDING ON THE \$300 MILLION PLUS CARACAS METRO ROLLING STOCK AND EQUIPMENT TENDER, THE EMBASSY SUGGESTED THAT THE TWO US CONSORTIA LEADERS, PULLMAN STANDARD AND WESTINGHOUSE,

DISENTANGLE THEIR TWO CONSORTIA IN AN ATTEMPT TO ARRIVE AT A MORE COMPETITIVE BIDDING LEVEL. THE TWO COMPANIES DELAYED AT LEAST TWO MONTHS IN TRYING TO WORK OUT A BETTER ARRANGEMENT, CITING THEIR CORPORATE LAWYERS' HESITANCY REGARDING INTERPRETATION OF ANTI-TRUST LAWS AS THE REASON FOR THE DELAY AND FOR THEIR FINAL INABILITY OF FORMALLY PRESENT A NEW JOINT PROPOSAL. LIKEWISE, IN THE CASE OF THE \$2.5BILLION CORPOZULIA STEEL PROJECT, ANUMBER OF US FIRMS WHICH PARTICIPATED IN THE NATIONAL CONSTRUCTORS ASSOCIATION TECHNOLOGICAL MISSION TO VENEZUELA CITED UNCERTAINTIES REGARDING US ANTITRUST LEGISLATION AS THE REASON WHY THEY WERE INHIBITED FROM PUTTING TOGETHER THE PACKAGE DEAL, I.E., EQUITY, TECHNICAL ASSISTANCE, CAPITAL EQUIPMENT AND FINANCING, THAT THE VENEZUELANS WERE REQUESTING.

3. QUESTION OF LAW: ON THE ONE HAND, IF ANTITRUST CONSIDERATIONS DO NOT REPEAT DO NOT INHIBIT EFFECTIVE BIDDING BY US CONSULTANTS, ENGINEERS, CONSTRUCTORS AND CAPITAL GOODS SUPPLIERS, THIS GHOST SHOULD BE LAID TO REST, EXORCISED. ADDITIONAL CLARIFACTCTIONS TO THAT CONTAINED IN THE US DEPARTMENT OF JUSTICE ANTITRUST GUILDE FOR INTERNATIONAL OPERATIONS SHOULD BE PUBLISHED. THIS GOSPEL SHOULD BE SPREAD TO AMERICAN CORPORATIONS INTERESTED IN OVERSEAS MAJOR PROJECT OPERATIONS. MOST IMPORTANTLY, AND EFFORT SHOULD BE MADE TO RE-EDUCATE THOSE CORPORATE LEVEL LAWYERS WHO APPEAR TO BE INHIBITING THE EFFORTS OF SALES ENGINEERS BY INVOKING THE SPECTURE OF "ANTITRUST". ON THE OTHER HAND, IF UNCERTAINTIES REGARDING THE APPLI - CATION OF ANTITRUST LAWS DO REPEAT DO INHIBIT THE FORMATION OF US UNCLASSIFIED

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CONSORTIA TO BID PACKAGE DEALS ON THOSE VERY LARGE PROJECTS WHERE NO ONE FIRM CAN ASSUME THE ENTIRE RISK, THEN THAT PRESCRIPTIVE REMEDIES ARE AVAILABLE? TO WHAT DEGREE DO DOMESTIC ANTITRUST CONSIDERATIONS IMPACT ON INTERNATIONAL BIDDING? WHAT CLARIFICATION OF THE LEGISLATION OR MODIFICATIONS IN IMPLEMENTATION WOULD AMELIORATE THIS. IS SOME CHANGE IN THE REGULATIONS POSSIBLE TO PRESERVE THE DOMESTIC ANTITRUST PURPOSE BUT PERMIT A MORE FLEXIBLE GOVERNMENT-BUSINESS RELATIONSHIP IN THIS SPECIAL COMPETITIVE.

4. A COROLLARY QUESTION: IS THE DEPARTMENT OF COMMERCE AND/OR THE US GOVERNMENT AS A WHOLE, AND BY EXTENSION THE AMERICAN AMBASSADOR OVERSEAS, PREPARED TO CHOOSE AND SPONSOR THE COMPETITIVE ACTIVITIES OF A "CHOSEN" INSTRUMENT OF "US CHAMPION" FOR A GIVEN PROJECT?

5. RECOMMENDED SOLUTIONS. THE EMBASSY IS NOT SURE WHETHER THERE ARE ANY SOLUTIONS. IN FACT, WE HAVE BEEN TOLD THAT THERE IS NO PROBLEM. HOWEVER, OUR EXPERIENCE HERE, BRIEFLY DESCRIBED ABOVE, IN WHAT MAY WELL BE A UNIQUE SITUATION, DOES ARGUE FOR DEVOTING SOME SUBSTANTIAL INTELLECTUAL AND ORGANIZATIONAL RESOURCES TO ILLUMINATING THE SITUATION, DEFINING THE PROBLEM, AND RECOMMENDING SOLUTIONS. A WORKING GROUP, INCLUDING STATE (E/B:OCA AND L), COMMERCE (OED/MEPD,

ET AL.), TREASURY (ANTITRUST DIVISION), AND ELEMENTS OF THE PRIVATE  
SECTOR SUCH AS, FOR INSTANCE, THE NATIONAL CONSTRUCTORS ASSOCIATION,  
SHOULD BE FORMED TO CARRY OUT THIS TASK.  
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## Message Attributes

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